reconsidered in light of contentions about network congestion, inefficient network usage, etc. (¶¶ 282-290). Nowhere in that discussion did the Commission suggest that its Local Competition Order had somehow altered its long-standing rule in situations where one LEC hands off to another LEC a local call to an ISP.[28]

Despite this clear Commission precedent, the absence of any legal or policy reasons for creating a different rule concerning local calls to ISPs that are exchanged between ILECs and CLECs, the LECs' own statements in the Internet NOI proceeding, and the LECs' longstanding behavior in exchanging traffic with adjacent LECs, some RBOCs now contend that local calls to ISPs which are exchanged between an ILEC and a CLEC are not encompassed by Transport and Termination agreements executed pursuant to Sections 251 and 252 (see BA-NYNEX comments in Internet NOI filed March 24, 1997).

Whether local calls to ISPs are properly embraced by Transport and Termination agreements is clearly an important economic issue, given the undisputed growth of traffic to ISPs. Ameritech should not be allowed to duck this matter by refusing

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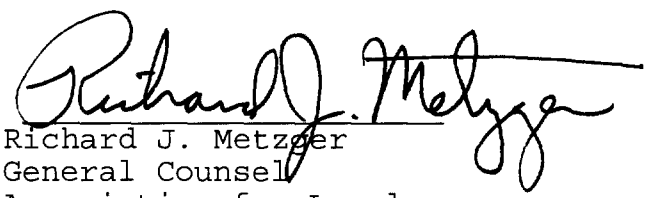
[28] LECs in the Internet NOI, as well as in state pleadings, have relied upon the fact that local calls to ISPs are among the traffic that must be exchanged between ILECs and CLECs pursuant to their Transport and Termination agreements. According to these LECS, this inclusion creates competition to gain ISP customers that merits a change in the current rules (SNET Internet NOI Comments at 10; Rochester petition to NYPSC in 93-C-0103, filed May 6, 1997). I.e., they acknowledge that such traffic currently does fall with the scope of Transport and Termination agreements.

to take a position publicly at the present time. Before acting on the merits of this application, the Commission should rule that: (1) calls within local calling areas from end users to ISPs should continue to be treated as local when an ILEC-to-CLEC hand off is involved; and (2) even if such calls are not required to be treated as local, the fact that LECs treat such calls as local when exchanged with adjacent LECs requires the same treatment when such traffic is exchanged with competitive LECs.

CONCLUSION

For the foregoing reasons, ALTS requests that the Commission dismiss Ameritech's Section 271 application for Michigan.

Respectfully submitted,

By: 

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June 10, 1997

ATTACHMENT A

Washington D C 20005
Office 202 326-3827
Fax 202 326-3625

Ameritech.

Lynn Shapiro Starr
Executive Director
Federal Relations

April 21, 1997

Ms. Regina Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 500
Washington, DC 20005

Dear Ms. Keeney:

Your letter of April 14, 1997, to Gary Lytle directing Ameritech to provide a written description of any circumstance under which Ameritech is providing or has provided in-region interLATA service to business or residential customers has been forwarded to me for a response.[1]

Section 271(f) permits Ameritech and its affiliates to engage in activity to the extent that such activity was authorized by the United States District Court for the District of Columbia pursuant to the AT&T consent decree ("MFJ"). Included in this category are activities for which Ameritech sought and received a court approved waiver. Attached is a list of waivers received by Ameritech, their date of entry, and the activities to which they relate.

In addition to the waivered activities, Ameritech services its own internal business needs pursuant to a decision of the United States District Court for the District of Columbia concerning "official services."[2] The Official Services Order will be discussed in detail below. Ameritech relies, in part, on

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1 You have also asked for the legal basis upon which Ameritech relies in providing any such service. By way of clarification, we assume that the reference in your letter excluding services "subject to the explicit exceptions of section 271(f)" was intended to reference 271(g) of the Telecommunications Act ("Act") insofar as 271(g) contains an explicit list of permissible in-region incidental interLATA services and 271(f) contains no explicit exceptions. If this assumption is incorrect, then please advise.

2 *United States v. Western Electric*, 569 F. Supp. 1057 (D. D.C. 1983)(Official Services Order).

this ruling, to support the testing of its interLATA facilities and capabilities through what Ameritech refers to as the "Friendly User Trial."

In preparing to enter into the long distance business, Ameritech has started from scratch -- both the facilities-based portion of its network and the operational systems that support it are brand new. Ameritech has developed twenty-seven major systems that must all interface and interoperate together. These systems include ordering, provisioning, rating and billing systems -- systems which are the core of any business. It is the largest development and implementation of support systems in the chosen configuration in the country -- ever. It consists of five million lines of software code and 300 interfaces. It must be exhaustively tested, tuned, and refined before Ameritech enters the long distance market. Customers will demand and are entitled to nothing less.

With this in mind, Ameritech embarked on the "Friendly User Trial." Today, there are approximately 60 participants: 58 employees of Ameritech Communications, Inc. (Ameritech's section 272 subsidiary) and Dick Notebaert, the Chairman and Barry Allen, Executive Vice President, Consumer and Business Services Sector of Ameritech. Trial participants are not charged for the long distance service they use, but they do have the following responsibilities:

- Place orders for service using a pre-arranged varity of channels (telemarketing, service representatives), with a pre-arranged script and report on the quality of the interaction.
- Continue normal personal long distance habits.
- Report network difficulties.
- Place a variety of predesignated calls each week.
- Keep a log of all calls, recording the date, time, number called and any comments on the quality of the service rendered.
- Compare the logs with bills to validate bills for correctness.
- Meet once a month to provide feedback.

Ameritech plans to expand the Friendly User Trial to include additional Ameritech employees for a period of approximately ninety days. The expansion of the trial is based on the recommendation of an outside consultant who recommends that all of the systems be tested for a peak load of twenty thousand orders per day. Ameritech cannot reach these testing levels without the Friendly User expansion.

Ameritech believes, for at least two reasons, that an expansion of the trial to additional Ameritech employees -- as well as the activities it has undertaken to date -- are fully authorized under the Communications Act of 1996 (the Act). First, the trial is not an interLATA service, as that term has been interpreted by the Commission. It is thus outside the reach of section 271(a). Second, even assuming, *arguendo*, that the trial is an interLATA service for purposes of section 271(a), it is permitted under section 271(f). These conclusions are discussed below.

Section 271(a) prohibits a BOC from providing in-region "interLATA services" prior to receiving section 271 authority. In the Non-Accounting Safeguards Order (CC Docket No. 96-149), the Commission concluded that the term "interLATA services" encompasses two categories of services: (1) interLATA telecommunications services; and (2) interLATA information services.[3] Clearly, Ameritech's friendly user trial is not an interLATA information service. Thus, it is subject to section 271(a) only if it represents an interLATA telecommunications service. The Act defines a "telecommunications service," however, as "the offering of telecommunications for a fee directly to the public . . . " (emphasis added). Because Ameritech's friendly user trial is neither offered to the public nor offered for a fee, it is not a telecommunications service. It is thus outside the scope of section 271(a).[4]

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3 Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489, released December 24, 1996, at para. 55.

4 Ameritech recognizes that the Act uses the term "telecommunications," rather than "telecommunications services" in defining "interLATA service." In the Non-Accounting Safeguards Order, the Commission explained this apparent anomaly. As the Commission found, by using the term "telecommunications," Congress included within the reach of section 271(a), not only interLATA telecommunications services, but also interLATA information services, which are provided on a bundled basis via telecommunications, but which would not have been subject to section 271 if that section applied only to telecommunications services. Thus, the use of the more generic term "telecommunications" in the Act.

Even if Ameritech's friendly user trial were considered to be an interLATA service for purposes of section 271(a), it would, nevertheless, be an authorized activity by virtue of section 271(f). That section provides that, notwithstanding section 271(a), a Bell operating company or affiliate may engage in "previously authorized activities." Therefore, under that provision, a BOC or its affiliates may provide any interLATA service that they were authorized to provide as of the day of enactment of the 1996 Act.

Ameritech was authorized to conduct the Friendly User Trial as of the day of enactment of the 1996 Act because the trial constitutes an "official service." In a 1983 decision interpreting the scope of the decree, Judge Greene squarely held that "official services" are outside both the letter and the spirit of the decree and thus may be provided by the BOCs, regardless of whether they are intraLATA or interLATA in nature.[5]

Turning, first, to the spirit of the decree, the court concluded "it makes no sense to prohibit the Operating Companies from using, constructing, and operating on their own the facilities they need to conduct Official Services, whether they be intraLATA or interLATA in character[.]"[6] The court based this conclusion on the costs and inefficiencies that would arise if the BOCs were prohibited from providing interLATA official services and its conclusion that the rationale underlying the decree "is wholly inapplicable to the provision of interLATA service by each Operating Company for its own internal, official purposes."[7] Noting that the interLATA prohibition was designed to address two forms of anticompetitive behavior -- discrimination and cross-subsidization -- the court held "[n]either of these reasons is

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5 The court described four categories of official services: (1) the operational support system network, which is a network of dedicated voice and data private lines used to monitor and control trunks and switches; (2) the information processing network, which is a network of dedicated lines linking information systems that are used to transmit data relating to trouble reports, service orders, trunk orders, and other business information; (3) service circuits used to receive repair calls and directory assistance calls from customers; and (4) voice communications used by the Operating Companies for hundreds of thousands of calls relating to their internal businesses. Ameritech's friendly user trial fits within the fourth category described by Judge Greene as the purpose of the trial is to test Ameritech's systems and procedures - a purpose which in uniquely related to Ameritech's internal businesses. (Emphasis added)

6 *Id.* at 1098.

7 *Id.* at 1100.

implicated by the ownership and operation by an Operating Company of its own interLATA Official Service network."[8]

Having concluded that the spirit of the decree did not require a prohibition on the provision by the BOCs of interLATA official services, the court went on to find that the text of the decree likewise required no such result:

> While the Operating Companies are prohibited by section II(D)(1) from providing "interexchange telecommunications services," section IV(P) defines "telecommunications services" as "offering *for hire* of telecommunications facilities." . . . Obviously, the Official Services are not "for hire."[9]

This reasoning compels the conclusion that Ameritech's friendly user trial is permissible under the Act. Insofar as the trial is not a commercial, for-profit undertaking, but a "give-away" of service as part of a test, Ameritech clearly has no incentive or ability to use the trial to anticompetitive ends. Moreover, as explained above, the failure to conduct this trial would unnecessarily and significantly impact Ameritech's ability to provide interLATA services upon receipt of section 271 authority. Not only would this deny the public the long-awaited benefit of additional competition in ong-distance services, it would upset the competitive balance carefully crafted by Congress in the 1996 Act.

As the Commission is aware, there are a number of obligations and rights in the Act that are triggered by a BOC's receipt of interLATA authority. These include the obligation of a BOC to provide intraLATA toll dialing parity in certain circumstances, and the right of the largest interexchange carriers to jointly market interLATA and resold local exchange services. In tying these rights and obligations to BOC receipt of interLATA authority, Congress clearly contemplated and intended that a BOC would have the ability to provide service on receipt of such authority. Its purpose was to

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8 *Id.* at note 187.

9 *Id.* at 1100 (emphasis supplied by court). The court went on to note that the decree similarly prohibits the BOCs from engaging in information services, but expressly permits them to engage in such services "for the management, control, or operation of a telecommunications system or the management of a telecommunications service." *Id.*

create a level playing field. Construing the Act to preclude preauthorization testing of interLATA services would dramatically tilt this playing field. Absent such testing, Ameritech could not enter the long distance market upon its authorization to do so. That would not only be unfair to the BOCs, but contrary to the public's interest in fair and balanced rules of competition.

In short, there is no reason why Ameritech should not be permitted to conduct the necessary testing of its interLATA services prior to receiving section 271 authority. Ameritech believes that the trial falls outside the scope of section 271 insofar as the Commission has defined interLATA services as encompassing interLATA telecommunications service and interLATA information services. But even if that is not the case -- that is, even if the Commission finds that section 271(a) applies to activities that are not services -- the Commission must find that the trial is a previously authorized activity under section 271(f). A contrary conclusion would require a tortured reading of the 1996 Act -- a reading that would be especially inappropriate insofar as it would be directly contrary to the public interest.

Sincerely,

Lynn S. Starr

Attachment
cc: David Ellen
Carol Mattey
Don Stockdale
Melissa Waksman

AMERITECH MFJ SECTION II(D)(2) WAIVERS

Waiver Issue	Summary	Date of Order
• Cellular/Wireless	RBOCs allowed to provide cellular and other wireless services across LATAs	4-28-95
• On-Line Transfer	Ameritech permitted to provide limited on-line transfer service to IXCs	2-4-94
• Alarm Monitoring	Ameritech permitted to provide monitoring and response calling across LATA boundaries	9-8-95
• TDD	Ameritech allowed to provide special telephone service to disabled callers on interLATA basis	7-26-91
• Reverse Directory	Ameritech permitted to provide customer name and address on interLATA basis	2-6-89
• Video Programming	Ameritech permitted to deliver video and cable programming across LATA boundaries	6-26-95
• 800 Service/LIDB	RBOCs allowed to provide independent telcos with interLATA transport of queries to LIDB or 800 service databases	2-10-92
• 911 Services	RBOCs permitted to provide 911 and E-911 services on an interLATA basis	2-2-89

ATTACHMENT B

ALTS
Association for Local Telecommunications Services

DIRECT DIAL: (202) 466-3046

RICHARD J. METZGER
GENERAL COUNSEL

June 3, 1997

Mr. John Nakahata
Chief, Competition Division
Office of General Counsel
Federal Communications Commission

Re: Regulatory Treatment of Local Calls to ISPs When Exchanged Between ILECs and CLECs

Dear Mr. Nakahata:

Attached is a letter from the Staff of the New York Public Service Commission dealing with "a number of formal complaints from interconnecting local exchange carriers objecting to New York Telephone Company's (NYT) pronouncement advising carriers that traffic delivered by NYT to interconnecting local exchange carriers for termination to Internet Service Providers is interstate in nature and is not eligible for reciprocal compensation." The letter points out the NYPSC has not approved NYT's interpretation, and that the interpretation "is at odds with NYT's own treatment of this traffic as intrastate in its assessment of usage charges to other customers."

This letter demonstrates the lack of merit to BA-NYNEX's position on this matter, and underscores the continuing need for a letter ruling from the Commission. While ALTS fully appreciates the support of the NYPSC Staff, this ruling could well trigger inconsistent determinations from other state agencies. Inasmuch as the Commission clearly retains jurisdiction over this important issue, there cannot be any prompt and authoritative resolution of this matter without the issuance of a letter ruling from within the Commission.

Yours truly,

Richard J. Metzger

1200 19th Street, NW • Suite 560 • Washington, DC 20036 • 202.466.ALT1 • Fax: 202.466.2979

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

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PUBLIC SERVICE COMMISSION

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Deputy Chairman

THOMAS J. DUNLEAVY
MAUREEN O. HELMER

LAWRENCE G. MALONE
Acting General Counsel

JOHN C. CRARY
Secretary

May 29, 1997

Mr. William Allan
Vice President
Regulatory Matters
New York Telephone Company
158 State Street
Albany, NY 12207

Dear Mr. Allan:

We have received a number of formal complaints from interconnecting local exchange carriers objecting to New York Telephone Company's (NYT) pronouncement advising carriers that traffic delivered by NYT to interconnecting local exchange carriers for termination to Internet Service Providers is interstate in nature and is not eligible for reciprocal compensation. The interconnecting local exchange carriers were informed of this via letters from Patrick Garzillo dated April 15 and 16, 1997.

Please be advised that the interpretation expressed in NYT's letters has not been approved by the Public Service Commission and is at odds with NYT's own treatment of this traffic as intrastate in its assessment of usage charges to other customers.

As you know, the Commission has procedures to address changes to existing tariffs or Commission policies on a prospective basis. If NYT believes such changes are necessary to address any reciprocal compensation matter, it should use those avenues. In the interim, we expect NYT to pay compensation to local exchange carriers for traffic delivered by NYT to the interconnecting carriers for termination to any Internet Service Providers, and to pay withheld compensation for any such previously delivered traffic.

Sincerely,

Allan Bausback

Allan Bausback
Acting Director
Communications Division

cc: Maureen Swift, ACC
Leo Maese, Cablevision
Alex J. Harris, MFS
Robert Mercier, TCG
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Ameritech

John T. Lenahan
Assistant General Counsel

VIA FACSIMILE

June 9, 1997

Mr. Richard J. Metzger
Association for Local
Local Telecommunications Services
1200 19th Street, NW
Suite 560
Washington, DC 20036

Dear Dick:

I'm in receipt of your letter dated June 4, 1997, which included a copy of the letter from Allan Bausbach of the New York Public Service Commission relative to reciprocal compensation on ISP calls. We had not previously seen Mr. Bausbach's letter and we are reviewing the issues raised in his letter. As I am sure you can understand, I am not yet able to answer your question whether Ameritech agrees with the NYPSC Staff or with NYNEX. It is possible that Ameritech will have a position that differs from that of either of these parties.

Sincerely,

John T. Lenahan

JTL:plj

c:\lenahan\jtl113.doc

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Dismiss by the Association for Local Telecommunications Services was served June 10, 1997, on the following persons by first-class mail or hand service, as indicted.

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